

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

32 CFR Part 1700

Procedures for Disclosure of Records Pursuant to the Freedom of Information Act

AGENCY: Office of the Director of National Intelligence.

ACTION: Final rule.

SUMMARY: This final rule amends the Office of the Director of National Intelligence's (ODNI) rules implementing the Freedom of Information Act (FOIA).

DATES: *Effective date:* This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Comment date: Comments due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit electronic comments to DNI-FOIA-Liaison@dni.gov.

FOR FURTHER INFORMATION CONTACT: Erin Morrison, 703-275-3500, DNI-FOIA-Liaison@dni.gov.

SUPPLEMENTARY INFORMATION: On August 16, 2007, 32 CFR part 1700 “Procedures for Disclosure of Records Pursuant to the Freedom of Information Act” became effective for ODNI. The regulation addresses all aspects of FOIA processing, including how and where to submit FOIA requests, fees for record services, procedures for handling business information, requests for expedited processing, and the right to appeal denials of information. This amendment makes alterations due to organizational changes and subsequent amendments to the FOIA.

Executive Order 12866 and 13563

This final rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1, Statement of Regulatory Philosophy and Principles, and in accordance with Executive Order 13563, Improving Regulation and Regulatory Review, section 1, General Principles of Regulation. Because this final rule does not constitute a significant regulatory action under section

3(f) of Executive Order 12866, it was not subject to mandatory prior review by the Office of Management and Budget Office of Information and Regulatory Affairs (OMB/OIRA) under section 6 of Executive Order 12866.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that ODNI consider the impact of paperwork and other burdens imposed on the public associated with the collection of information. There are no information collection requirements associated with this final rule and therefore no analysis of burden is required.

Executive Order 12988

This final rule meets the applicable standards set forth in Executive Order 12988, Civil Justice Reform.

Executive Order 13132

Executive Order 13132 requires ODNI to examine the implications for the distribution of power and responsibilities among the various levels of government resulting from this final rule. ODNI concludes that the final rule does not affect the rights, roles and responsibilities of the States, involves no preemption of State law, and does not limit State policymaking discretion. This rule has no federalism implications as defined by the Executive Order.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), ODNI has reviewed this final rule and certifies that it will not have a significant economic impact on a substantial number of small entities, and thus no regulatory flexibility analysis is required. This final rule pertains to ODNI's policies and practices for processing FOIA requests, and does not impose any new requirements on small entities.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law

104-4, 109 Stat. 48 (Mar. 22, 1995), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This final rule imposes no Federal mandate on any State, local, or Tribal government or on the private sector. Accordingly, no UMRA analysis of economic and regulatory alternatives is required.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Thus, it does not constitute major rules as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804.

Environmental Impact

ODNI has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4347, and has determined that this action does not have a significant effect on the human environment.

Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94-163, as amended, 42 U.S.C. 6362. This rulemaking is not a major regulatory action under the provisions of the EPCA.

This document revises part 1700.

List of Subjects in 32 CFR Part 1700

Administrative practice and procedure, Freedom of information.

The Office of the Director of National Intelligence revises 32 CFR part 1700 to read as follows:

PART 1700--PROCEDURES FOR DISCLOSURE OF RECORDS PURSUANT TO THE FREEDOM OF INFORMATION ACT

Sec.

1700.1 Authority and purpose.

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Authority: 5 U.S.C. 552; 50 U.S.C. 3023-3025; Pub. L. 108-458, 118 Stat. 3638.

§ 1700.1 Authority and purpose.

(a) This part is issued under the authority of the Freedom of Information Act, as amended, 5 U.S.C. 552; the National Security Act of 1947, as amended, 50 U.S.C. 3023-3025; and the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458, 118 Stat. 3638.

(b) This part prescribes procedures for:

(1) ODNI administration of the FOIA;

(2) Requesting records from ODNI pursuant to the FOIA; and

(3) Filing an administrative appeal with ODNI of an initial adverse decision under the FOIA.

(c) This part contains the rules that ODNI follows in processing requests for records under the FOIA. The rules in this part should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget.

§ 1700.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Direct costs* are those expenditures which ODNI actually incurs in the processing of a FOIA request. It includes, but is not limited to, the salary of the employee performing the work and costs associated with duplication. It does not include overhead factors such as space.

(b) *Fees* are those direct costs which may be assessed considering the categories established by the FOIA. Requesters should submit information to assist ODNI in determining the proper fee category. ODNI may draw reasonable inferences from the identity and activities of the requester in making fee determinations. The fee categories include:

(1) *Commercial use request.* A request seeking information for a use or purpose that furthers the requester's commercial, trade, or profit interests, including pursuit of those interests through litigation.

(2) *Educational institution.* Any institution that operates a program or programs of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research. ODNI may seek assurance from the requester that the request is in furtherance of scholarly research and will advise requesters of their placement in this category.

(3) *Non-commercial scientific institution.* An institution that is not operated on a commercial basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(4) *Representative of the news media.* Any person or entity that actively gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that concerns current events or that would be of interest to the public.

(c) *Freedom of Information Act, FOIA, or the Act* is the statute as codified at 5 U.S.C. 552, as amended.

(d) *FOIA Public Liaison* is the individual designated by the Chief FOIA Officer to assist FOIA requesters with concerns about ODNI's processing of their FOIA requests, including assistance in resolving disputes.

(e) *Information Review & Release Group ("IRRG") Chief* is the ODNI employee to whom the Chief of the ODNI Information Management Office (IMO) has delegated their responsibility for processing FOIA requests.

(f) *ODNI* is the Office of the Director of National Intelligence and its component organizations. This does not include other members of the Intelligence Community as defined in 50 U.S.C. 3003, or other federal entities subsequently designated in accordance with this authority, unless specifically designated and included in this part or in the notice of a system of records.

(g) *OGIS* is the Office of Government Information Services within the National Archives and Records Administration.

(h) *Pages* are paper copies of standard office size or the dollar value equivalent in other media.

(i) *Person* is an individual, partnership, corporation, association, or public or private organization other than an agency.

(j) *Record* is any document, irrespective of physical or electronic form, made or received by ODNI in pursuance of federal law or in connection with the transaction of public business and appropriate for preservation by ODNI as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of ODNI or because of the informational value of the data contained therein.

(k) *Reproduction* is the generation of a copy of a requested record in a form appropriate for release.

(l) *Requester* is a person, organization, or other entity who submits a written or electronic communication requesting information on or concerning the FOIA program, the availability of records from ODNI, or both.

(m) *Review* means all time expended in examining a record to determine

whether any portion must be withheld pursuant to law and in effecting any required deletions. This does not include personnel hours expended in resolving general legal or policy issues.

(n) *Search* means all time expended in looking for and retrieving material that may be responsive to a request.

§ 1700.3 Contact for general information and requests.

For general information on this part, to inquire about the FOIA program at ODNI, or to file a FOIA request, a written submission should be sent, either by mail to the Office of the Director of National Intelligence, IRRG Chief, Information Management Office, Washington, DC 20511, or by email to DNI-FOIA@dni.gov. To check on the status of a pending case, an individual may either call the ODNI FOIA Office at (703) 275-1313 or email the ODNI FOIA Office at DNI-FOIA@dni.gov.

§ 1700.4 Requirements for making requests.

(a) FOIA requests must be submitted in writing. They may be sent to the Office of the Director of National Intelligence, IRRG Chief, Information Management Office, Washington, DC 20511; by email to DNI-FOIA@dni.gov; or through the FOIA portal at <https://www.foia.gov>. For the most expeditious handling, the request letter and envelope, or subject line of the electronic transmission, should be marked “Freedom of Information Act Request.” The requester shall provide contact information, such as a phone number, email address, or mailing address.

(b) A requester who is making a request for records about themselves must comply with the verification of identity requirements provided in the ODNI Privacy Act regulations, 32 CFR 1701.7(d).

(c) Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that third party or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that third party. Such notarized authorization or declaration should authorize disclosure of the requested records to the requester. If the third party is

deceased, the requester should submit proof of that fact (*e.g.*, a copy of a death certificate or an obituary). As an exercise of administrative discretion, ODNI can require a requester to supply additional information to verify that a third party has consented to disclosure.

(d) Requests must describe the records sought with sufficient detail to enable ODNI personnel to locate them with a reasonable amount of effort. In general, requesters should include as much detail as possible about the specific records or the types of records that they are seeking, such as the date, title, name, author, recipient, or subject matter of the record. Before or after submitting their requests, requesters may contact the FOIA Public Liaison to discuss the records they are seeking and to receive assistance in describing the records. If ODNI determines that a request does not reasonably describe the records sought, ODNI shall inform the requester what additional information is needed or why the request is otherwise insufficient. If a request does not reasonably describe the records sought, the agency's response to the request may be delayed.

(e) A request should specify the preferred format (including electronic) to convey the records requested. ODNI will accommodate a request for a specific format if the record is readily available in that format. When the format of the response is not specified, ODNI will provide responsive records in the most convenient format.

§ 1700.5 Processing of requests for records.

(a) On receipt of a request, IMO's IRRG staff will send an acknowledgement letter to the requester which will provide an assigned request number for future reference and, if fees will be charged, shall confirm the requester's agreement to pay fees.

(b) To determine which records are responsive to the request, IRRG staff will task relevant ODNI components to search all places likely to contain potentially responsive records. The ODNI components ordinarily will include records in their possession as of the date that they begin their search unless the request specifically

included an end date for the search. If another date is used, the IRRG staff will inform the requester of the date used and the reason for its use. The potentially responsive records will be sent to IRRG staff for responsiveness review and application of relevant exemptions, if any.

(c) When reviewing responsive records, ODNI will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the agency will ordinarily proceed in one of the following ways:

(1) When the record originates with ODNI but contains information of interest to another agency or other Federal Government office, ODNI will typically consult with that other agency or office prior to making a release determination.

(2) When ODNI believes that a different agency is best able to determine whether to disclose the record, ODNI typically will refer the record to that agency and ask that agency to respond to the requester concerning that record (provided the other agency is subject to FOIA).

(i) Ordinarily, the agency that originated the record will be presumed to be the best agency to make the disclosure determination. However, if ODNI and the originating agency jointly agree that ODNI is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) If another agency accepts responsibility for responding to a particular record, ODNI will notify the requester of the referral. When appropriate and available, the notice will include a point of contact for the other agency.

(3) The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For instance, if ODNI locates within its file's materials originating with another Intelligence Community element, and the involvement of that element in the matter is classified and not publicly acknowledged,

then disclosing or attributing the involvement of that Intelligence Community element could cause damage to the national security. In such an instance, and to avoid harm to an interest protected by an applicable exemption, ODNI will coordinate with the originating agency to seek its views on the disclosure of the record. ODNI will then inform the requester of the release determination.

(d) When a request is made for information that is classified, ODNI must determine whether the information is currently and properly classified in accordance with applicable classification rules. When a request involves a record containing classified information that has been classified by another agency, ODNI will refer that portion of the request to the agency that originated the information, or has the primary interest in it, as appropriate. Similarly, when a record contains information that ODNI has derivatively classified (for example, when ODNI's classification is based on information originally classified by another agency), ODNI must refer that portion of the request to the agency that originally classified the underlying information.

(e) ODNI will notify the requester of its determination to grant, deny, or refer the FOIA request. ODNI will release reasonably segregable, non-exempt information. For any adverse determination—including those regarding any disputed fee matter; a denial of a request for a fee waiver; a determination to withhold a record in whole or in part; a determination that a record does not exist or cannot be located; or a denial of a request for expedited processing—the notice will include the following information:

(1) The name and title or position of the person responsible for the determination to deny the request in whole or in part;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied in denying the request. The notice will indicate, if feasible, the amount of information deleted and the exemption under which a deletion is made on the released portion of the record, unless including that information would harm an interest protected by the exemption;

(3) An estimate of the volume of information withheld, if applicable, such as

the number of pages or some other reasonable form of estimation. Such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable FOIA exemption;

(4) A statement that the adverse determination may be appealed and a description of the requirements for an appeal; and

(5) A statement notifying the requester of the assistance available from the FOIA Public Liaison, and the dispute resolution services offered by OGIS.

§ 1700.6 Time frames for ODNI responses.

(a) ODNI will ordinarily respond to requests according to their order of receipt.

(b) When evaluating requests, ODNI may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work or time needed to process the request.

(c) Subject to paragraphs (e) and (f) of this section, ODNI will respond to a FOIA request within 20 days after receipt of the request. A request is received by ODNI, for purposes of commencing the 20-day time frame for its response, on the day that the request is received by the IMO or, in any event, not later than ten days after the request is first received by any ODNI component.

(d) ODNI must determine whether to grant or deny, in whole or in part, an administrative appeal submitted in accordance with § 1700.7 within 20 days after receipt of the appeal, unless the time frame for a response to an appeal is extended in accordance with paragraph (e) of this section.

(e) ODNI may toll the 20-day time frame set forth in paragraph (c) or (d) of this section for one of the two reasons cited below, as permitted by 5 U.S.C.

552(a)(6)(A)(ii). If ODNI tolls the time frame, the tolling period ends upon receipt of the requester's response.

(1) Once, to await information that the ODNI has reasonably requested from

the requester; or

(2) As necessary, to clarify with the requester issues regarding the fee assessment.

(f) Whenever the statutory time limit for processing a request cannot be met because of “unusual circumstances,” as defined in the FOIA, and ODNI extends the time limit on that basis, ODNI will notify the requester in writing, before expiration of the 20-day period to respond, of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds 10 days, ODNI shall, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing. ODNI shall make available its designated FOIA contact and its FOIA Public Liaison for this purpose and notify the requester of the dispute resolution services offered by OGIS.

(g) For the purposes of satisfying unusual circumstances under the FOIA, ODNI may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. ODNI will notify the requester(s) of the decision to aggregate.

(h) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve a compelling need. For this purpose, a “compelling need” involves either:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information.

(i) A request for expedited processing must be in writing and may be made at

any time.

(j) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. Under this paragraph (h), a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—an urgency that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an "urgency to inform" the public on the topic. As a matter of administrative discretion, ODNI may waive the formal certification requirement.

(k) The IMO will decide within 10 days of its receipt of a request for expedited processing of its decision whether to grant or deny such a request. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 1700.7 Administrative appeals.

(a) A requester may appeal any adverse determination to a person designated by the Director of National Intelligence (the "Designee"). The Designee will act on behalf of the Director of National Intelligence on all appeals under this section.

(b) An appeal ordinarily will not be adjudicated if the request becomes subject to litigation.

(c) The appeal must be transmitted if sent by email, or postmarked if sent by U.S. mail, within 90 days after the date of the adverse determination letter. The appeal shall clearly identify the ODNI determination that is being appealed, including the

assigned ODNI case request number. For the most expeditious handling, the subject line of the electronic transmission, or appeal letter and envelope, should be marked “Freedom of Information Act Appeal.”

(d) On receipt of any appeal involving classified information, the Designee must take appropriate action to ensure compliance with applicable classification rules.

(e) ODNI’s decision on an appeal shall be in writing. A decision upholding ODNI’s original determination will contain a statement that identifies the reasons for affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by OGIS as a non-exclusive alternative to litigation. If ODNI’s decision is remanded or modified on appeal, the requester will be notified of that determination in writing. ODNI will thereafter further process the request in accordance with that appeal determination.

§ 1700.8 Procedures for requests implicating confidential commercial information.

(a) Definitions:

(1) *Confidential commercial information* means commercial or financial information obtained by ODNI from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides information, either directly or indirectly, to the Federal Government.

(b) A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected under FOIA Exemption 4. These designations shall expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) ODNI will provide the submitter with prompt written notice of confidential commercial information when records containing such information are responsive to a FOIA request and ODNI determines that it may be required to disclose the records.

The notice shall:

- (1) Give the submitter an opportunity to object to disclosure of the information, in whole or in part;
- (2) Describe the confidential commercial information requested or include copies of the requested record(s) or record portion(s) containing the information; and
- (3) Inform the submitter of the time frame in which it must respond to the notice.

(d) ODNI will allow the submitter seven days to respond to the notice described in paragraph (b) of this section. If the submitter objects to the disclosure of the information, in whole or in part, they must provide ODNI with a detailed written statement of the objection. The statement must specify all grounds for withholding any portion of the information under any FOIA exemption and, when relying on FOIA Exemption 4, it must explain why the information is a trade secret, or commercial or financial information that is privileged and confidential. If the submitter fails to respond within the time frame specified in the notice or an extended time frame if requested by the submitter, ODNI will conclude that the submitter has no objection to disclosure of the information. ODNI will only consider information that it receives within the time frame specified in the notice or an extended time frame if requested by the submitter. Any information provided by a submitter under this Part may itself be subject to disclosure under the FOIA.

(e) ODNI will consider the submitter's objection and specific grounds for non-disclosure in deciding whether to disclose confidential commercial information.

Whenever ODNI decides to disclose information over the submitter's objection, it will provide written notice to the submitter that includes:

- (1) A statement of the reasons why each of the bases for withholding were not

sustained in whole or in part;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time after the notice.

(f) The notice requirements of paragraphs (c) and (d) of this section shall not apply if:

(1) ODNI determines that the information is exempt under the FOIA;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600; or

(4) The designation made by the submitter under paragraph (a) of this section appears obviously frivolous. In such a case, ODNI shall, within a reasonable time prior to the date the disclosure will be made, give the submitter written notice of the final decision to disclose the information.

(g) Whenever ODNI provides a submitter with the notice described in paragraph (b) of this section, ODNI also will provide notice to the requester that notice and an opportunity to object to the disclosure are being provided to the submitter. ODNI also must notify the requester when it notifies the submitter of its intent to disclose the requested information, and whenever a submitter files a lawsuit to prevent the disclosure of the information.

§ 1700.9 Fees.

(a) Search, review, and reproduction fees will be charged in accordance with the provisions below relating to the schedule, limitations, and category of requester. Applicable fees will be due even if a subsequent search locates no responsive records or some or all of the responsive records must be denied under one or more of the exemptions of the FOIA. Requesters must pay fees by check or money order made

payable to the Treasury of the United States.

(1) ODNI will charge fees that recoup the full allowable direct costs it incurs in processing a FOIA request. Fees may be charged for search, review or duplication. As a matter of administrative discretion, ODNI may release records without charge or at a reduced rate whenever ODNI determines that the interest of the U.S. Government would be served. ODNI will use the most efficient and least costly methods to comply with a request. ODNI may charge for search time even if no records are located or the records located are exempt from disclosure. If ODNI fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, unless the circumstances outlined in paragraph (o) of this section are met.

(2) [Reserved]

(b) With regard to manual searches for records, ODNI will charge the salary rate(s) (calculated as the basic rate of pay plus 16 percent of that basic rate to cover benefits) of the employee(s) performing the search.

(c) In calculating charges for computer searches for records, ODNI will charge the actual direct cost of providing the service, including the cost of operating computers and other electronic equipment, such as photocopiers and scanners, directly attributable to searching for records potentially responsive to the FOIA request and the portion of the salary of the operators/programmers performing the search.

(d) ODNI may only charge requesters seeking records for commercial use for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review—that is, the review undertaken the first time IRRG staff analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. ODNI may assess the costs for such subsequent review. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review

stage.

(e) Records will be duplicated at a rate of \$.50 per page, except that ODNI may adjust this rate from time to time by rule published in the Federal Register. For copies prepared by computer, such as tapes, CDs, DVDs, or printouts, ODNI will charge the actual cost, including operator time, of production. For other methods of reproduction or duplication, ODNI will charge the actual direct costs of producing the document(s). If ODNI estimates that duplication charges are likely to exceed \$25.00, it will notify the requester of the estimated amount of fees, unless the requester indicated in advance their willingness to pay fees as high as those anticipated. The notice will offer an opportunity to confer with IRRG staff to reformulate the request to meet the requester's needs at a lower cost. If ODNI notifies a requester that the actual or estimated fees are in excess of \$25.00, the request will not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designate some amount of fees they are willing to pay, or in the case of a non-commercial use requester who has not yet been provided with their statutory entitlements, the requester designates that they seek only that which can be provided by the statutory entitlements. The ODNI's IRRG staff or FOIA Public Liaison are available to assist requesters with reformulating requests to meet their needs at a lower cost.

(f) ODNI will charge the requester the full costs of providing them with the following services:

- (1) Certifying that records are true copies; or
- (2) Sending records by special methods such as express mail.

(g) ODNI may assess interest charges on an unpaid bill starting on the 31st calendar day following the day on which the bill was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by ODNI.

(h) ODNI will not charge a search fee for requests by educational institutions,

non-commercial scientific institutions, or representatives of the news media. A search fee will be charged for a commercial use request.

(i) ODNI will not charge duplication fees for requests by educational institutions, non-commercial scientific institutions, or representatives of the news media for a non-commercial use request if ODNI fails to comply with the FOIA's time limits in which to respond to a request.

(j) Except for a commercial use request, ODNI will not charge for the first 100 pages of duplication and the first two hours of search.

(k) A requester may not file multiple requests, each seeking portions of a record or records, solely for the purpose of avoiding payment of fees. When ODNI reasonably believes that a requester, or a group of requesters acting in concert, has submitted requests that constitute a single request involving clearly related matters, ODNI may aggregate those requests and charge accordingly.

(l) ODNI may not require a requester to make payment before ODNI begins work to satisfy the request or to continue work on a request, unless:

(1) ODNI estimates or determines that the allowable charges that the requester may be required to pay are likely to exceed \$250.00; or

(2) The requester has previously failed to pay a fee charged within 30 calendar days of the date of billing.

(m) In cases in which ODNI requires advance payment, the request will not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of ODNI's fee determination, the request will be closed.

(1) Upon completion of all required review and the receipt of accrued fees (or promise to pay fees), ODNI will promptly inform the requester in writing of those records or portions of records that will be released and those that will be denied.

(2) For records to be released, ODNI will provide paper copies or records on electronic media, if requested and available.

(3) For records not released or partially released, ODNI shall explain the reasons for any denial and give notice of a right of administrative appeal. For partial releases, redactions will be applied to ensure requesters can see the placement and general length of withholdings with the applicable exemption(s) clearly with respect to each withholding.

(n) Fee waiver requests and appeals. Upon written request, ODNI may waive or reduce fees that are otherwise chargeable under this part. If a fee waiver or reduction in fees is requested, the requester must demonstrate that a waiver or reduction in fees is in the public interest because disclosure of the requested records is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the requester's commercial interest. After processing, actual fees must exceed \$25.00 for ODNI to require payment of fees. Appeals should be resolved prior to the initiation of processing and the incurring of costs. However, fee waiver requests will be accepted at any time prior to ODNI's decision regarding the request, except when processing has been initiated.

(o) If the ODNI has determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, the ODNI may charge search fees, or, in the case of requesters described in paragraph (h) of this section, may charge duplication fees, if the following steps are taken.

(1) The ODNI must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and ODNI must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii).

(2) If this exception is satisfied, the ODNI may charge all applicable fees incurred in the processing of the request.

§ 1700.10 Other rights and services.

Nothing in this part shall be construed so as to enlarge, diminish, modify, or

alter the powers or authority of the ODNI; or construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Dated: July 7, 2023.

Gregory M. Koch

Director, Information Management Office, Chief Operating Officer

Office of the Director of National Intelligence

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